SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

October Term, 1974

No. 74-938

ANTHONY LAUSCHE,

Petitioner,

vs.

COMMISSIONER OF PUBLIC WELFARE

and

COUNTY OF OTTER TAIL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA SUPREME COURT

BRIEF OF THE RESPONDENT COMMISSIONER OF PUBLIC WELFARE IN OPPOSITION

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JURISDICTION

This Court does not have jurisdiction under 28 U.S.C. § 1257(3) because the petitioner failed to raise the alleged federal questions in the proceedings below. *See*, U.S. Sup. Ct. Rule 19, 28 U.S.C. 1257(3) and *Cardinale v. Louisiana*, 394 U.S. 437, 89 S.Ct. 1162, 22 L.Ed. 2d, 398 (1969).

STATUTORY PROVISIONS INVOLVED

The proceedings below were based entirely on Minn. Stat. § 253A.15 subd. 2 (1974) (Minnesota Statutes, Vol. 2, p. 3096), which sets forth the procedure for a person committed as mentally ill and dangerous to petition for release before a special review board, to appeal for a hearing *de novo* before a panel of three probate judges, and to appeal to the state supreme court.

Minn. Stat. § 253A.16 subd. 5 (1974) (Minnesota Statutes, Vol. 2, p. 3099) states the necessary composition of the special review board.

Minn. Stat. § 253A.07 (1974) (Minnesota Statutes, Vol. 2, p. 3090) sets forth the procedures and standards for civil commitment in the State of Minnesota. Although these provisions were *not* involved in the proceedings below, the petitioner is now suggesting that they have somehow presented a federal question for review by this Court.

Minn. Stat. § 253A.21 subd. 3 and 5 (1974) (Minnesota Statutes, Vol. 2, p. 3103) contains the proper procedure by which the petitioner could have obtained judicial review of his initial commitment. Because of the length of the foregoing statutes, they are fully set forth in the appendix (R.A.1).

STATEMENT OF THE CASE

The petitioner, Anthony Lausche, was committed as mentally ill and dangerous on December 19, 1969, by a probate court of competent jurisdiction. That commitment was never challenged by appeal or habeas corpus proceedings.

This proceeding began before a special review board convened pursuant to Minn. Stat. § 253A.15 subd. 2 (1974), in April 1972, to determine whether the petitioner should be discharged from his existing commitment of mentally ill and dangerous. An intervening prison sentence caused the special review board to reconsider petitioner's case on June 28, 1972. That hearing resulted in the administrative order of July 3, 1972, discharging petitioner's commitment (Petition, A. 16, 17). The Otter Tail County Attorney thereupon appealed for a rehearing and reconsideration before a three probate judge appeal panel, pursuant to Minn. Stat. § 253A.15 subd. 2(b), (c), and (d) (1974).

On October 18, 1972, the duly convened appeal panel heard the matter *de novo* (R. 5, 75). The appeal panel found that the petitioner was still mentally ill and dangerous and ordered that his commitment not be discharged in its order of July 3, 1973 (Petition, A.10).

The petitioner then appealed to the state supreme court pursuant to Minn. Stat. § 253A.15 subd. 2(f) (1974). The supreme court affirmed the appeal panel's order on November 1, 1974 (Petition, A.1).

It bears restating that at no point in the aforesaid proceedings was there any challenge to the petitioner's original 1969 commitment, nor could there have been under the controlling statutes.

ARGUMENT

I. NONE OF THE QUESTIONS RAISED BY THE PETITIONER WERE DECIDED AT ANY STAGE OF THE PROCEEDINGS BELOW.

Constitutional standards for civil commitment and for minimally adequate treatment of mentally ill persons are no longer novel issues in federal or state courts. It is possible that persons situated as the petitioner herein may raise substantial federal questions in the proper proceedings under the appropriate circumstances. However, neither the record nor the proceedings in this case give rise to the alleged federal questions in the petition. First, the permissible constitutional questions were not appropriately raised below, and second, all constitutional questions concerning the initial commitment were simply beyond the scope of the challenged proceedings. This Court will not entertain a review of lower court proceedings on issues not decided, *Cardinale v. Louisiana*, 394 U.S. 437, 89 S.Ct. 1162, 22 L.Ed. 2d 398 (1969); *Tacon v. Arizona*, 410 U.S. 351, 93 S.Ct. 998, 35 L.Ed. 2d 346 (1973).

A. The constitutional questions were not timely raised.

U.S. Sup. Ct. Rule 23 requires that a petition for a writ of certiorari to a state court specify the stage in the proceedings and the manner in which the federal questions were raised, and the disposition of those questions below. The petitioner has not complied in any respect with that rule.

Moreover, petitioner's failure to specify federal questions in the proceedings below merely reflects the fact that those questions were never presented to either the special review

board or the probate judge appeal panel. Indeed, that entire portion of the record, including a legal memorandum submitted on the petitioner's behalf, is absolutely devoid of any constitutional claims.

The petitioner first raised constitutional questions on appeal to the state supreme court. The court obviously did not consider the issues properly presented, although its reasoning therefore is not entirely clear. The court stated:

> Three issues can be gleaned from the appellant's brief: (1) Is there evidence to support the appeal panel's determination that the appellant is mentally ill and dangerous under Minn. St. 1971, § 253A.02, subd. 3, and Minn. St. § 253A.02, subd. 17? (2) What is the standard of proof and upon which party is the burden that appellant should or should not be discharged from commitment? (3) Is the order returning the appellant to Stillwater State Prison in effect a discharge from commitment?

(Petition, A.3, 4). Thus, it is evident from the court's characterization of the issues and from the entire opinion that it neither considered nor ruled upon constitutional issues which could conceivably have emanated from the prior proceedings.[1]

Since those issues were not considered in the state court proceedings, they cannot be considered before this Court, *Cardinale v. Louisiana, supra.*

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[1] Although the court cited *Lessard v. Schmidt*, 349 F. Supp. 1078 (E.D. Wis. 1972), it recognized that the case considered a person's constitutional rights during the initial commitment proceeding and distinguished it on the grounds that the petitioner's initial commitment was not on appeal. Also, note: judgment vacated and case remanded, *Schmidt v. Lessard*, 414 U.S. 473, 94 S.Ct. 713, 38 L.Ed. 2d 661 (1974).

B. A challenge to commitment powers and standards could not have been raised below.

The petition before this Court dwells almost exclusively upon the alleged constitutional infirmities of the Minnesota commitment procedures. Yet these have at no time been in issue. The proceedings below concerned the *discharge* of a commitment, not a commitment itself. The petitioner has had and continues to have ample opportunity to properly challenge the commitment standards if he so chooses. Minn. Stat. § 253A.21 subd. 5 (1974)[2] permits an appeal from any commitment order, and Minn. Stat. § 253A.21 subd. 3 (1974) preserves the right to seek relief by writ of habeas corpus from any commitment order. The petitioner, however, has not availed himself of these opportunities.

The proceedings below have all occurred pursuant to Minn. Stat. § 253A.15 subd. 2 (1974). The only orders affecting a patient's status that can be made under that section by either the special review board or the probate judge appeal panel are: continuation of the commitment, provisional discharge, or discharge. Any appeal to the state supreme court is necessarily confined to those issues because the court is limited to review on the record.

It is clear that the state supreme court could not have ruled on the constitutionality or any other aspect of commitment. Likewise, this Court cannot review decisions not made below. To be sure, the state court discussed by way of dictum commitment and even the standard of proof to be employed, but

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[2] In Minnesota, the district courts have general jurisdiction and their judgments and orders may be appealed to the state supreme court. Although § 253A.21 subd. 5 has been amended since the petitioner's commitment, the appeal rights have remained substantially the same.

this was not a holding because the appeal was not from a commitment. Thus, the petitioner is precluded from presenting questions concerning the standards and procedures for commitment before this Court.

II. THE RECORD IS INADEQUATE TO DECIDE IMPORTANT CONSTITUTIONAL ISSUES.

The petitioner's argument 1.a. (Petition, 6), in which he urges that there is no compelling state interest for his commitment or continued confinement, is raised for the first time in his petition. The argument was not made at any previous stage of the proceeding, nor were any of the supporting cases previously cited.

The petitioner's argument 1.b. (Petition, 8) was at least introduced in his brief to the state supreme court. He asserts the theory that a committed mentally ill person has a constitutional right to treatment. While that may become one of the most significant issues before this Court during the decade, it should not be decided on a record as woefully inadequate as this one.

There is no evidence in the record that the petitioner was not receiving as much care and treatment as he possibly could in any alternative institution. To the contrary, the record generally shows that many efforts have been made to treat him and to ultimately release him as a productive member of society. But because the issue was not before the appeal panel, no effort was made by any party to thoroughly examine the quality of treatment being rendered. Even the state supreme court could only comment that many treatment methods have been tried (Petition, A.5). The poor record and lack of substantial consideration by the court below are both sufficient

grounds for this Court to deny the petition. *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969).

III. THE STATE SUPREME COURT CORRECTLY DECIDED THE STANDARD OF PROOF FOR DISCHARGE.

The petitioner argues that on the petition for discharge, the standard of proof ought to be proof beyond a reasonable doubt and not proof by a fair preponderance of the evidence. As noted earlier, his entire argument seems to discuss initial commitment, as do his supporting cases (Petition, 10-13), which issue was not considered below. Assuming, *arguendo*, that the argument applies to the petition for discharge, then the state supreme court properly decided the issue.

The petitioner apparently is arguing that a state must prove beyond a reasonable doubt that a patient's confinement must be continued each time a patient appears before the special review board. The consequence of this position approaches the absurd. Since a patient may petition the special review board for a hearing at will, the petitioner would in essence require the state to recommit a mentally ill and dangerous person as often as the board met. The court below understood the implications of the petitioner's argument and made the correct decision (Petition, A.7, 8).

CONCLUSION

For the reasons set forth in this brief, the respondent, commissioner of public welfare, prays that this petition for a writ of certiorari be denied.

Dated: February 27, 1975.

Respectfully submitted,

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APPENDIX

Minnesota Statutes (1974):

§ 253A.15 DISCHARGE.

* * *

Subd. 2 (a) Where such patient was found by the committing court to be dangerous to the public or to have a psychopathic personality, such patient shall not be discharged or provisionally discharged except upon order of the commissioner and no such discharge or provisional discharge shall be ordered by the commissioner unless he is satisfied that the patient is capable of making an acceptable adjustment in society and unless the commissioner has received a favorable recommendation to that effect by a majority of the special review board appointed and acting under section 253A.16. A petition for an order of discharge or provisional discharge shall be filed with the commissioner and may be filed by the patient or by the head of the hospital. The special review board shall be convened by the commissioner at reasonable intervals and shall hold a hearing on each petition for discharge or provisional discharge prior to making any recommendation thereon. The probate court and the county attorney of the county of commitment, and the petitioner and his attorney, if any, shall each be given written notice by the commissioner of the time and place of the hearing before the special review board at least 14 days prior to the date of such hearing and may appear before the special review board and such persons shall also be given written notice of the making of any such order by the commissioner and a copy of the same within five days after the making and entry of such order, the notice and copy

thereof to be furnished by registered mail with return receipt. No order by the commissioner for the discharge or provisional discharge of a patient shall be made effective sooner than 30 days after the making and entry of such order.

(b) There shall be established by the supreme court an appeal panel composed of three probate judges and two alternate probate judges, all of whom shall be appointed from among the acting probate judges of the state by the chief justice of the supreme court for terms of one year each. Only three judges need hear any case. One of the regular three judges so appointed shall be designated as the chief judge of the appeal panel and that judge is hereby vested with power and authority to fix the time and place of all hearings before the panel, issue all notices, subpoena witnesses, appoint counsel for the patient, if necessary, and generally to supervise and direct the operation of the appeal panel. The chief judge shall designate any other judge or any alternate judge to act as chief judge in any case where such chief judge is unable to act and with the same powers and authority. No judge appointed to the appeal panel shall take part in the consideration of any case in which that judge committed the patient in the probate court. The chief justice of the supreme court shall determine the compensation of the judges serving on the appeal panel, such compensation to be in addition to their ordinary compensation as probate judges, and all compensation and expenses of the appeal panel shall be borne by the department of public welfare.

(c) The patient or the county attorney of the county from which the patient was committed aggrieved by the action of the commissioner under clause (a), may petition for a rehearing and reconsideration of the case before the appeal panel. Such petition shall be filed with the supreme court within 30

days after the making and entry of the order of the commissioner. The supreme court shall notify the head of the hospital in which the patient is confined and refer the petition to the chief judge of the appeal panel. Written notice by mail shall be given to the patient, the county attorney of the county of commitment, the commissioner, the head of the hospital in which the patient is confined, and such persons as the chief judge may designate, of the time and place of the hearing on such petition. Such notice is to be given not less than 14 days prior to the date of such hearing, which hearing shall be within 45 days of the filing of the petition. Any person may oppose the petition. The appeal panel may appoint examiners, and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all such proceedings. The patient and the county attorney of the committing county shall be entitled to be present and to cross-examine all witnesses. A majority of the appeal panel shall make and enter such orders as they may deem just and equitable and the orders of the appeal panel shall supersede all orders of the commissioner in such cases.

(d) In all proceedings before the appeal panel the patient shall be afforded an opportunity to be represented by counsel, and if neither the patient or others provide counsel the chief judge of the appeal panel shall appoint counsel to represent the patient. The compensation of such appointed counsel shall be determined by the chief judge and the expense thereof shall be borne and paid by the department of public welfare.

(e) The filing with the supreme court of a petition under clause (c) shall immediately suspend the operation of any order for discharge, provisional discharge or release from custody of the patient and said patient shall not thereafter be dis-

charged or released in any manner except upon order of a majority of the appeal panel.

(f) A party aggrieved by an order of the appeal panel may appeal from such decision to the supreme court in the same manner as other appeals in civil actions.

§ 253A.16 REVIEW BOARDS.

* * *

Subd. 5. There shall be established by the commissioner one special review board for mentally ill and dangerous and psychopathic personalities, of three members, all of whom shall be experienced in the field of mental illness. One member of the special review board shall be a physician qualified in the diagnosis of mental illness or mental deficiency, one member shall be an attorney and no member shall be connected with the department of public welfare. This special review board shall meet at least every six months and be otherwise on call of the commissioner and shall hear and consider all petitions for transfer out of the Minnesota security hospital, discharge or provisional discharge filed under and pursuant to sections 253A.14 and 253A.15, and make recommendations to the commissioner concerning the same.

253A.07 JUDICIAL COMMITMENT. Subdivision 1. Any interested person may file in the probate court of the county of the proposed patient's settlement or presence a petition for commitment of a proposed patient, setting forth the name and address of the proposed patient, the name and address of his nearest relatives, and the reasons for the petition. Such petition shall be accompanied either by a written statement by a licensed physician stating that he has examined the proposed patient and is of the opinion that the proposed

patient may be mentally ill, mentally deficient, or inebriate, and should be hospitalized, or by a written statement by the petitioner that, after reasonable effort, the petitioner has been unable to obtain an examination by a licensed physician or that an examination could not be performed. Before filing, a copy of the petition shall be delivered by the petitioner to the county welfare department.

Subd. 2. After the filing of the petition the probate court shall appoint two examiners, at least one of whom shall be a licensed physician. If the proposed patient is alleged to be mentally deficient one of the two examiners shall be skilled in the ascertainment of mental deficiency. If the proposed patient is alleged to be drug dependent and if at least one examiner qualified in the field of alcohol and drug abuse cannot be obtained, the court shall appoint a single examiner plus one additional person qualified in the field of alcohol and drug abuse. The final report submitted to the court shall contain all pertinent information and comments preferred by such qualified person. The court shall issue such orders as may be necessary to provide for the examination of the proposed patient which will be conducted prior to the hearing. The examination shall be held at a hospital, a public health facility, the home of the proposed patient, or such other suitable place as the court shall determine is not likely to have a harmful effect on the health of the proposed patient. No persons shall be present during the examination unless authorized by the examiner. The court may require the examiners to file with the court, prior to the hearing two copies of their report as to the condition of the proposed patient and his need for hospitalization, which report, if filed, shall be available to counsel.

Subd. 3. The court may direct a health or peace officer or any other person to take the proposed patient into custody

and transport him to a public hospital, private hospital consenting to receive him, public health facility, or other institution, for observation, evaluation, diagnosis, emergency treatment, care, and if necessary, confinement. The order of the court may be executed on any day and at any time thereof, by the use of all necessary means including the breaking open of any place in which the proposed patient is located and the imposition of necessary restraint upon the person of such proposed patient. Unless otherwise ordered by the court, a peace officer taking the proposed patient into custody pursuant to this subdivision shall not be in uniform and shall not use a motor vehicle visibly marked as a police vehicle.

Subd. 4. From the time of his admission any patient admitted under the provisions of this section may communicate by all reasonable means with a reasonable number of persons at reasonable hours of the day and night, and may consult privately with an attorney, at least one member of his family, and with a personal physician. Such patient shall be informed in writing at the time of this admission of his right to communicate as herein specified and of his right to a hearing as provided in subdivision 8 of this section.

Subd. 5. If the proposed patient has no settlement in this state, the commissioner shall be notified by the court of the proceedings.

Subd. 6. Notice of the filing of the petition and the order for examination shall be given to the proposed patient, his counsel, one interested person other than the proposed patient's counsel and the petitioner, and such other persons as the court directs. Notice shall be served personally on the proposed patient and unless otherwise ordered by the court such notice shall be served on the proposed patient by a non-uniformed person. The contents of all documents served shall be read to

the proposed patient. If the court has reason to believe that notice would be likely to be injurious to the proposed patient, notice to the proposed patient may be omitted if a guardian ad litem is appointed by the probate court for receipt of such notice. Such guardian shall represent the proposed patient throughout the action on the petition.

Subd. 7. The probate court shall direct the county welfare department to make an investigation into the financial circumstances, family relationships, residence, social history, and background of such patient and make a report thereof in writing to be filed with the court for the use and guidance of the head of the hospital to which such person may be committed. The court may require that such report be filed prior to the commitment hearing.

Subd. 8. The court shall fix a time and place for the hearing which shall be held within 14 days from the date of the filing of the petition. For good cause shown, the court may extend the time of hearing up to an additional 30 days. When any proposed patient has not had a hearing on a petition filed for his commitment within 14 days from the date of filing of said petition, or within the extended time, the proceedings shall be dismissed. The proposed patient, or the head of a hospital or other institution in which the patient is held, may demand in writing at any time that the hearing be held immediately. Unless the hearing is thereafter held within five days of the date of such demand, exclusive of Saturdays, Sundays and legal holidays, the petition shall be automatically discharged if the patient is being held in a hospital or other institution pursuant to court order. For good cause shown, the court may extend the time of hearing on demand up to an additional 10 days.

Subd. 9. The proposed patient, his counsel, one interested person other than his counsel, the petitioner, and such other persons as the court directs shall be given at least five days' notice by the court that a hearing will be held and at least two days' notice of the time and date of the hearing, unless notice is waived by patient's counsel. The commissioner shall be given ten days' notice by mail of a commitment hearing of a person alleged to be mentally deficient unless such notice is expressly waived by the commissioner.

Subd. 10. The proposed patient, the petitioner, and all other persons to whom notice has been given pursuant to subdivision 9 may attend the hearing and, except for the patient's legal counsel, may testify. The court shall notify such persons of their right to attend the hearing and to testify.

Subd. 11. The proposed patient and the petitioner may present and cross-examine witnesses, including examiners, at the hearing and the court may in its discretion receive the testimony of any other person.

Subd. 12. Subject to the proposed patient's right to attend the hearing, the court in its discretion may permit the proposed patient to be absent from the hearing if the person conducting the hearing shall have observed and consulted with the proposed patient prior to the hearing. The court may exclude from the hearing any person not necessary for the conduct of the proceedings except those persons to whom notice was given pursuant to subdivision 9 and any other persons requested to be present by the proposed patient. At the time of the hearing the patient shall not be so under the influence or so suffer the effects of drugs, medication, or other treatment as to be hampered in preparing for or participating in the proceedings. When in the opinion of the licensed physician attending the patient the discontinuance of drugs, medication,

or other treatment is not in the best interest of the patient, the court at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the patient has received during the 48 hours immediately prior to the hearing.

Subd. 13. The hearing shall be conducted in a manner consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the proposed patient. If the proposed patient is to be present, the hearing may be held at a hospital, a public health facility, the proposed patient's residence, or such other suitable and appropriate place as the court may determine. In all such proceedings the court shall keep accurate minutes containing, among other appropriate materials, notations of appearances at the hearing, including witnesses, of motions made and the disposition thereof, and of all waivers of rights made by the parties. The court shall have taken and preserved an accurate stenographic record or tape recording of the proceedings. The court shall not be bound by the evidence presented by the examiners but shall make its determination upon the entire record pursuant to the rules of evidence. In all cases the court shall find the facts specifically, state separately its conclusions of law thereon, and direct the entry of an appropriate judgment. Where commitment is ordered under the provisions of subdivision 17, clause (a) of this section, the findings of fact and conclusions of law shall specifically include the proposed patient's conduct which is a basis for determining that each of the requisites of subdivision 17, clause (a) is met, including less restrictive alternatives to commitment considered and rejected by the court and the reasons for rejecting each alternative.

Subd. 14. The court shall hear any relevant testimony and shall receive all relevant evidence which may be offered at the hearing.

Subd. 15. In all such proceedings the county attorney may appear and represent the petitioner or shall appear and represent the petitioner upon the request of the judge of probate court or the petitioner. The petitioner shall be notified of his right to request that the county attorney appear. The proposed patient shall be afforded an opportunity to be represented by counsel, and if neither the proposed patient nor others provide counsel, the court at the time the examiners or licensed physicians are appointed shall appoint counsel to represent the proposed patient. Counsel shall consult with the proposed patient prior to the hearing and shall be given adequate time to prepare thereto. Counsel shall have the full right of subpoena.

Subd. 16. If, upon completion of the hearing and consideration of the record, the court finds that the proposed patient is not mentally ill, mentally deficient, or an inebriate, it shall terminate the proceedings, dismiss the application, and discharge the proposed patient forthwith.

Subd. 17. If, upon completion of the hearing and consideration of the record which shall be made pursuant to the rules of evidence, the court finds the proposed patient is:

(a) A mentally ill person, and (1) that the evidence of the proposed patient's conduct clearly shows that his customary self-control, judgment, and discretion in the conduct of his affairs and social relations is lessened to such an extent that hospitalization is necessary for his own welfare or the protection of society; that is, that the evidence of his conduct clearly shows: (i) that he has attempted to or threatened to take his own life or attempted to seriously physically harm

himself or others; or (ii) that he has failed to protect himself from exploitation from others; or (ii) that he has failed to care for his own needs for food, clothing, shelter, safety or medical care; and (2) after careful consideration of reasonable alternative, dispositions, including but not limited to, dismissal of petition, out-patient care, informal or voluntary hospitalization in a private or public facility, appointment of a guardian, or release before commitment as provided for in section 253A.12, and finds no suitable alternative to involuntary hospitalization, the court shall commit such patient to a public hospital or a private hospital consenting to receive him, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as hereinafter provided;

(b) Mentally deficient, the court shall appoint the commissioner guardian of the person of the proposed patient and commit him to the care and custody of the commissioner;

(c) A mentally ill person determined to be in need of commitment in accordance with clauses (a) (1) and (2) above, and a person who is dangerous to the public, the court shall commit such patient to a public hospital or a private hospital consenting to receive him, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as hereinafter provided;

(d) An inebriate person, and that commitment to a hospital is necessary for the welfare of the patient or the protection of society, the court shall commit such patient to a public hospital or a private hospital consenting to receive the person, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as hereinafter provided.

Subd. 18. Upon commitment of a mentally deficient patient under subdivision 17, clause (b) , the commissioner may place such patient in an appropriate home, hospital, or institu-

tion, or exercise general supervision over him anywhere in the state outside of any institution through any county welfare board or other appropriate agency authorized by the commissioner.

Subd. 19. Whenever a person is committed under subdivision 17, clause (a) or (c), the court shall issue a warrant in duplicate, committing the patient to the custody of the head of the designated hospital for the care of mentally ill or inebriate persons, and the patient shall be transported to the institution as provided in section 253A.09.

Subd. 20. Upon delivery of a patient committed under subdivision 17, clause (a) or (c), to the hospital to which he is committed, the head of the hospital shall retain the duplicate warrant and endorse his receipt upon the original warrant, which shall be filed in the court of commitment. After such delivery the patient shall be under the control and custody of the head of the designated hospital.

Subd. 21. A copy of the petition for commitment, a copy of the court's findings of fact and conclusions of law, a copy of the court order committing the patient, a copy of the report of the medical examiners, and a copy of the social service report shall be transmitted within 14 days to the head of the hospital receiving such person, or in the case of a mentally deficient patient, to the commissioner.

Subd. 22. The court shall determine the nature and extent of the patient's property and the nature and extent of the property of the persons upon whom liability for such patient's care and support is imposed by law. One copy of such findings shall be filed with the court and another copy shall be transmitted to the commissioner.

Subd. 23. Whenever a patient is committed under subdivision 17, clause (a) or (c), for a 60 day period, he shall be held

at the hospital during such period for observation, evaluation, diagnosis, treatment, and care. Every patient admitted to a hospital under such clause shall be examined by at least one examiner as soon as practicable after admission. Within 60 days from the date of the commitment order the head of the hospital shall file a written statement with the court issuing said order, and a copy thereof with the commissioner and the patient's attorney, setting forth findings as to the condition of the patient; a diagnosis of the patient; whether the patient is in need of further care and treatment; whether such care and treatment, if any, must be provided in a hospital and if so what type; whether the patient must be committed to a hospital; and whether the patient is dangerous to the public.

Subd. 24. If no written statement is filed within 60 days or if the written statement describes the patient as not in need of further institutional care and treatment, the proceedings shall be terminated by the court and the patient shall be discharged from the hospital unless the patient was committed as mentally ill and dangerous to the public or as a psychopathic personality, in which case a further hearing shall be held by the committing court within 14 days after the court's receipt of such statement and the committing court shall then make the final determination.

Subd. 25. If the written statement describes the patient as being in need of further institutional care and treatment, the court shall consider such finding in making its final determination, and the court may order hospitalization of the proposed patient for an indeterminate period. A copy of the final order for commitment shall be forwarded to the head of the proper hospital.

Subd. 26. If, in the case of a person committed under subdivision 17, clause (c), the statement describes the patient as

mentally ill but not dangerous to the public, the patient shall not be committed for an indeterminate period as dangerous to the public except following a hearing as provided for in this section. If the statement describes the patient as mentally ill and dangerous to the public, the court may order hospitalization of the patient for an indeterminate period. Upon the patient's request the court shall conduct a hearing as provided by this section before final determination.

Subd. 27. At any time prior to the expiration of the 60 day period a patient who has not been committed as mentally ill and dangerous to the public or as a pyschopathic personality may be transferred to informal status upon his application in writing with the consent of the head of the hospital. Upon such transfer the head of the hospital shall immediately notify the court in writing and upon receipt of the same the court shall terminate the proceedings.

Subd. 28. During the 60 day period a patient who has not been committed as mentally ill and dangerous to the public or as a pyschopathic personality may be placed on provisional discharge as provided in section 253A.15, but unless such discharge is made absolute before the end of the 60 day period the patient shall remain subject to the same laws, rules, and regulations as other patients committed under sections 253A.01 to 253A.21.

Subd. 29. Patients or other responsible persons are required to pay the necessary hospital charges for patients committed or transferred to private hospitals or institutions.

Subd. 30 When, pursuant to an order of a state or federal district court, a defendant in a criminal proceeding is examined in the probate court, the probate court shall transmit its findings and return the defendant to such district court unless otherwise ordered. A duplicate of the findings shall be

filed in the probate court, but there shall be no petition, property report, or commitment unless otherwise ordered.

§ 253A.21 GENERAL PROVISIONS.

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Subd. 3. Nothing in sections 253A.01 to 253A.21 shall be construed to abridge the right of any person to the writ of habeas corpus.

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Subd. 5. The commissioner or any other aggrieved party may appeal to the district court from any order entered under sections 253A.01 to 253A.21 in the manner prescribed in section 487.39.

Upon perfection of the appeal, the return shall be filed forthwith. The district court shall give the appeal preference over every other proceeding therein. Such appeal shall not suspend the operation of the order appealed from until the appeal is determined, unless otherwise ordered by the district court. Notwithstanding any contrary provision in section 487.39, an appeal may be taken from the determination of a district court judge to the supreme court without leave of the supreme court in cases in which the district court upholds an order committing a person under section 253A.07, subdivision 17 or an order denying a petition under section 253A.19.